

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia.

OCTOBER TERM, 1925.

No. 4406.

290

ISAAC NOTES, APPELLANT,

vs.

**HATTIE NOTES, E. C. SNYDER, U. S. MARSHAL FOR THE
DISTRICT OF COLUMBIA, AND SECURITY STORAGE
COMPANY.**

**APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.**

FILED DECEMBER 19, 1925.

PRINTED JANUARY 25, 1926.

Court of Appeals of the District of Columbia.

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vs.

HATTIE NOTES, E. C. SNYDER, U. S. MARSHAL FOR THE
DISTRICT OF COLUMBIA, AND SECURITY STORAGE
COMPANY, APPELLEES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

INDEX.

	Original	Print
Caption	a	1
Bill	1	1
Rule to show cause; marshal's return.....	7	6
Motion to discharge rule as to E. C. Snyder, U. S. marshal for the District of Columbia; affidavit of S. B. Callahan.....	8	7
Motion to dismiss bill of complaint.....	10	8
Answer of Security Storage Company.....	11	8
Motion for leave to file supplemental and amended bill of complaint; supplemental and amended bill of complaint.....	15	11
Memorandum	20	13
Order dismissing bill of complaint, &c.....	20	14
Appeal noted by Isaac Notes; undertaking on appeal filed.....	21	14
Assignment of errors.....	22	15
Designation of record.....	22	15
Clerk's certificate.....	24	15

Court of Appeals of the District of Columbia.

No. 4406.

ISAAC NOTES, Appellant,

vs.

HATTIE NOTES et al.

a Supreme Court of the District of Columbia.

Equity. No. 43807.

ISAAC NOTES, Plaintiff,

vs.

HATTIE NOTES, E. C. SNYDER, U. S. Marshal for the D. C.;
SECURITY STORAGE COMPANY, Defendants.

UNITED STATES OF AMERICA,

District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1

Bill.

Filed March 19, 1925.

In the Supreme Court of the District of Columbia, Holding an
Equity Court.

Equity. No. 43807.

ISAAC NOTES, Plaintiff,

vs.

HATTIE NOTES, E. C. SNYDER, U. S. Marshal for the D. C.;
SECURITY STORAGE COMPANY, Defendants.

The petition of Isaac Notes respectfully shows unto the Court as follows:

1. That he is a citizen of the United States, a resident of the District of Columbia, and brings this suit in his own right with respect to the matters and things hereinafter appearing.

2. That the defendant, Hattie Notes, is a citizen of the United States, a resident of the District of Columbia (although now sojourning in the City of Brooklyn, State of New York), and is sued herein as the wife of the plaintiff with respect to the matters and things as will hereafter appear. The defendant, E. C. Snyder, is a citizen of the United States, a resident of the District of Columbia, and is sued herein as the U. S. Marshal for the District of Columbia; and that the defendant, Security Storage Company, is a corporation doing a general storage business in the District of Columbia.

3. The plaintiff and defendant, Hattie Notes, were married the 7th day of December, 1919, and have one child as a result of said marriage. That shortly after this marriage, the plaintiff from time to time purchased certain household goods effects and furnishings with the money belonging to himself and his wife; other articles were purchased with moneys which the plaintiff received from his father; and other articles of furnishings and effects the plaintiff received from his parents as wedding gifts. A list of said household goods, articles, furnishings and effects are hereto annexed, marked Schedule A, and the plaintiff prays that same be read and considered as a part hereof.

4. That the plaintiff and defendant lived together as husband and wife at the Lenox Apartments, in the District of Columbia, until some time in June, 1923, when they decided to place their household goods, effects, and furnishings in storage with the defendant, Security Storage Company while spending the summer at Atlantic City. That sometime in July 1923, while the plaintiff and his wife were living together in Atlantic City, certain differences arose between them, and the defendant then and there left and abandoned her husband, taking with her their child; and the defendant has remained away from the plaintiff ever since. This disagreement culminated into a separation suit being filed by the plaintiff in this Honorable Court, to which suit the defendant, Hattie Notes, filed an answer and a cross bill. The Court after due consideration thereof dismissed the plaintiff's petition for separation, as well as the cross bill of the defendant.

5. Your petitioner further represents unto the Court that the defendant Hattie Notes, shortly after leaving and abandoning the plaintiff, attempted to obtain possession of the household goods, articles, furnishings and effects described in paragraph three of this petition, and did therefore sue out a writ of replevin against the defendant, Security Storage Company. The plaintiff in order to protect his right, title, and interest in and to said articles of household goods, furnishings and effect, instituted a subsequent replevin action naming the U. S. Marshal as one of the defendants in order to prevent the said Marshal from delivering to the defendant, Hattie Notes, the articles in question.

6. Your petitioner is further advised believes and therefore avers that the Court of Appeals of the District of Columbia in the case of Isaac Notes vs. E. C. Snyder, U. S. Marshal et al. No. 4159 has just decided that because of the admitted joint ownership of the plaintiff, and defendant, Hattie Notes, with respect to the goods

and effects in question, the plaintiff could not maintain a replevin action.

7. Your petitioner further represents unto this Court that the goods in question are of the value of at least Five Thousand Dollars (\$5,000), some of which were purchased out of a joint fund of the plaintiff and his wife; other goods were purchased with money which the plaintiff received from his father; and other articles were received by him as wedding presents from his parents. That because of the admitted joint ownership of some of the articles in question, your petitioner is remediless at law; and his only remedy is in a Court of Equity where full, adequate and complete relief can be granted; and that unless immediate relief is granted, the defendant, Hattie Notes, will obtain exclusive possession of the goods in question, and remove them from the District of Columbia, and the right, title and interest of the plaintiff thereto will be lost.

4 Wherefore your petitioner prays:

1. That the process issue out of this Court directed to the defendants and each of them, requiring them to answer the exigencies of this Court.

2. That a rule issue out of this Court directed to the defendant, Security Storage Company, and E. C. Snyder, U. S. Marshal for the D. C., requiring them to show cause by a day named why they should not be temporarily restrained and enjoined from delivering to the defendant, Hattie Notes, the goods, articles and personal property referred to in paragraph 3 of this petition.

3. That the Court upon a final hearing award to the plaintiff the goods, chattels, and personal property in question, or so much thereof as in justice and equity he is entitled.

4. And for such other and further relief as the Court may seem meet and proper.

ISAAC NOTES.

CRANDAL MACKEY AND
J. B. STEIN,

Attys. for Petitioner.

DISTRICT OF COLUMBIA, ss:

I do solemnly swear that I have read the annexed petition by me subscribed and know the contents thereof; that the statements of facts therein made as upon personal knowledge are true, and those made upon information and belief, I believe to be true.

ISAAC NOTES.

Subscribed and sworn to before me this 18th day of March, 1925.

GOLDIE STEIN, [SEAL.]
Notary Public, D. C.

- 5 China closet (marred),
Hamper & contents,
Arm chair (partly covered),
Upholstered seat arm rocker (partly covered),
Tea table,
Upholstered arm chair (partly covered),
Folding drop leaf table (top covered),
Barrel & contents,
Barrel & contents,
Paper bag and contents,
Bundle ironing board, carpet sweeper and broom,
Table (top wrapped),
Paper bag and contents,
Basket,
Wash board,
Box and contents,
Waste basket and contents,
Costumer,
Kidder Kar,
Victrola,
Pasteboard box,
Pasteboard box,
Wicker flower stand,
Bundle curtain rods (wrapped),
Bundle screen (wrapped),
Foot tub,
Rocker,
Barrel and contents,
Barrel and contents,
Leather seat chair,
Wooden bed end (marred),
Bureau (top wrapped),
Bundle 2 crib sides,
Crib end,
Crib spring,
Box mattress,
Bureau glass,
Iron bed spring,
Bundle 4 bed slats,
Bundle mattress,
Wooden bed end,
Wooden bed end,
Bundle curtain stretcher,
Bundle rods,
Bundle rug,
Bundle rug,
Bundle rug,
Upholstered arm sofa (partly wrapped),
Sideboard (wrapped),
Crate 3 table leaves,
Dressing table and glass,

Kitchen table,
 Teddy bear,
 Cane seat kitchen chair,
 6 Suit case (handle off),
 Bundle 2 wooden bed sides,
 Electric floor lamp (shade wrapped),
 Bronze figure,
 Electric floor lamp (shade wrapped),
 Bundle mattress (soiled, torn),
 Refrigerator (2 castors off and inside),
 Music cabinet,
 Package in paper (pictures),
 Bundle pictures, (wrapped),
 Bundle pictures (wrapped),
 Bundle pictures (wrapped),
 Child's high chair,
 Kitchen chair,
 Marble statue (toe broken off),
 Electric lamp (wrapped),
 Marble statue (4 fingers off),
 Marble statue, (base chipped, nose chipped),
 Pflueger Upright Piano No. 12931 (marred, chipped, front panel
 out),
 Leather seat chair,
 Box (top loose),
 Cane seat and back arm rocker,
 Upholstered seat arm chair,
 Barrel and contents,
 Extension table top (wrapped),
 Crib end,
 Package in paper,
 Wicker baby carriage,
 Metal stand,
 Barrel and contents,
 Package in paper,
 Trunk,
 Mirror,
 Sideboard top with glass,
 Hall mirror,
 Wash boiler and contents,
 Hall runner,
 Piano bench (chipped),
 Rug,
 Sewing cabinet (leg off),
 Leather seat arm chair (marred),
 Leather seat chair,
 Leather seat chair,
 Leather seat chair,
 Chiffonrobe,
 Extension table legs (wrapped),
 Sewing machine,

Dressing table and glass (marred).
 Telephone stand (marred, scratched),
 Hall seat (marred),
 Serving table (wrapped),
 Bundle rug,
 Wooden bed end (marred),
 Box mattress,
 Bundle 4 wooden bed sides (marred).
 7 Chair (marred),
 Chair (marred).

Mattress,
 Child's commode chair,
 Smoking stand,
 Cane seat bench,
 Cane seat chair,
 Crib mattress,
 Bundle in muslin,
 Small stand,
 Bundle mattress,
 Bundle 8 bed slats,
 Wooden bed end (marred),
 Chiffonier (top wrapped),
 Wooden bed end (marred).

Rule to Show Cause.

Filed March 19, 1925.

* * * * *

Upon consideration of the petition of Isaac Notes herein filed on the 19 day of March 1925, it is this 19th day of March 1925, ordered and adjudged, that the defendants, E. C. Snyder, U. S. Marshal for the District of Columbia, and Security Storage, and each of them, show cause on the 27th day of March 1925, why they should not be enjoined and restrained pendente lite from delivering over to the defendant Hattie Notes, the goods, chattels and personal property described in paragraph three of the petition herein filed, provided a copy hereof be served on the said E. C. Snyder, U. S. Marshal as aforesaid, and Security Storage Company, defendants, at least two clear days before the return day hereof.

By the Court:

WILLIAM HITZ,

Justice.

Marshal's Return.

8 Served a copy of the within rule on E. C. Snyder, U. S. Marshal; service accepted personally 3, 19 25; Security Storage Co., by Chas. W. Pimper, V.-Pres. & Treas., personally 3, 19 25, personally.

E. C. SNYDER,
U. S. Marshal.

Filed March 21, 1925.

W.

*Motion to Discharge Rule as to E. C. Snyder, U. S. Marshal
for the D. C.*

Filed March 27, 1925.

* * * * *

Now comes the defendant, E. C. Snyder, U. S. Marshal for the District of Columbia, by his attorney, and moves the Court to discharge the rule issued herein for reasons appearing in the affidavit filed herewith and made a part hereof.

E. HILTON JACKSON,
*Attorney for E. C. Snyder, U. S. Marshal
for the District of Columbia.*

Affidavit.

Filed March 27, 1925.

DISTRICT OF COLUMBIA, ss:

I, S. B. Callahan, Chief Deputy Marshal for the District of Columbia, being first duly sworn, depose and say that I am familiar with the contents of the petition filed herein against E. C. Snyder, U. S. Marshal for the District of Columbia; that certain costs have been adjudged against the plaintiff on the coming down of
9 the mandate from the Court of Appeals of the District of Columbia in the case of Notes vs. Security Storage Company, No. 68005 at Law and the case of Notes vs. E. C. Snyder, U. S. Marshal, et al., Law No. 68012, but that the said Isaac Notes, the plaintiff in this cause, and the appellant in both of the cases above indicated, has failed to take any steps to pay said costs since the coming down of said mandate; that the defendant, the U. S. Marshal, by stipulation filed in said cause at Law No. 68012, was made the custodian of the property herein, pending the adjudication of the rights of the respective parties in said cause, but, in view of the determination of said cause by mandate of the Court of Appeals as aforesaid, the defendant herein, the Security Storage Company, was still looking to the said U. S. Marshal for the payment of said storage charges amounting to \$510.95, bill for which has been rendered against the said U. S. Marshal by said storage company as aforesaid; in order to protect his official duty in the premises and discharge his obligation to the Security Storage Company by reason of the possession of the said property by the stipulation aforesaid, it would be embarrassing for said U. S. Marshal without the payment of said storage charges by Isaac Notes, the plaintiff herein, to further continue in possession and control of said property.

Your affiant, therefore, respectfully represents to the Court that the rule herein should be discharged unless the said Isaac Notes forthwith pays said storage charges and thus relieve the U. S. Marshal of any continuing liability.

S. B. CALLAHAN,
Chief Deputy U. S. Marshal.

10 Subscribed and sworn to before me this 27th day of March,
A. D. 1925.

[SEAL.]

LILLIAN A. TRAMMELL.

Notary Public, D. C.

Motion to Dismiss Bill of Complaint.

Filed April 23, 1925.

* * * * * * *

Now comes the defendant, Hattie Notes, specially appearing through her attorney for this purpose and no other, and moves the Court to dismiss the bill of complaint herein on the following grounds:

1. That said bill of complaint is without equity in that all of the issues therein presented have been adjudicated between the plaintiff and the defendant, Hattie Notes, in Law No. 68,012, Supreme Court of the District of Columbia, in the case of Isaac Notes vs. Hattie G. Notes, of which cause and the proceedings had thereunder this Court will take judicial notice, all of which said proceedings are referred to and made a part hereof.

2. The bill is without equity for the reason that upon the averments of said bill the plaintiff and this defendant are seized of the property herein as tenants by the entirety.

E. HILTON JACKSON.

Attorney for Defendant Hattie Notes.

Crandal Mackey, Esq.;

J. B. Stein, Esq.:

Please take notice that the above motion has been calendared for hearing before Mr. Justice Hochling in Equity Court on Friday, April 24, 1925, at ten o'clock A. M., or as soon thereafter as counsel may be conveniently heard.

E. HILTON JACKSON.

Attorney for Defendant Hattie Notes.

11

Answer of Security Storage Company.

Filed April 24, 1925.

* * * * * * *

Answering said petition and rule to show cause, this defendant states:

1. and 2. This defendant admits the averments of paragraphs one and two of said petition to be true.

3. and 4. This defendant has no knowledge or information which will enable it to admit or deny the averments of paragraphs three and four of said petition, but, if the same shall become material, in so far as concerns this defendant, this defendant insists upon strict proof thereof.

5. Answering the averments of paragraph five of the petition, this defendant admits that the defendant, Hattie Notes, sued out a writ of replevin against this defendant, the same being in an action at law in this court entitled Hattie Notes vs. Security Storage Company, and numbered 68,005 on the Law Docket, wherein the said Hattie Notes sought to obtain possession of the certain household goods, articles, furnishings and effects referred to in said petition; and this defendant further admits that the plaintiff herein, Isaac Notes, thereafter filed an action of replevin in this court against the United States Marshal, as one of the defendants, said action being entitled Isaac Notes vs. E. C. Snyder, U. S. Marshal for the District of Columbia, and Hattie Notes, and numbered 68,012 on the Law Docket, in which said action the said Isaac Notes sought to secure possession of said household goods, articles, furnishings and effects. For a more complete and accurate statement, however, as to the two actions of replevin, just mentioned, this defendant refers to the records of this court

12 in said causes.

6. Answering the averments of paragraph six of said petition, this defendant is advised that the same constitute a substantially correct statement of the decision of the Court of Appeals in the case therein referred to; but this defendant is further advised, and therefore avers, that the admission relied upon by the Court of Appeals that the ownership of the aforesaid goods and effects was a joint ownership of the plaintiff, Isaac Notes, and the defendant, Hattie Notes, was an admission of the said plaintiff, and not of the said defendant.

7. Answering the averments of paragraph seven of said petition, this defendant states that it is unable to give any accurate opinion or estimate as to the value of the goods and effects in question, nor has it any knowledge or information which will enable it to admit or deny the averments of said paragraph as to the way in which the same were purchased or acquired, or by whom. If, however, such allegations and averments shall become material in so far as concerns this defendant, this defendant insists upon strict proof thereof. This defendant is advised that the remaining averments of said paragraph relate to matters of law, which this defendant is not required to answer.

Further answering said petition and rule, this defendant states that it conducts, by due authority of law, a storage business in the City of Washington, District of Columbia, at No. 1140 Fifteenth Street, Northwest, and that the aforesaid household goods, articles, furnishings and effects have been in the continued actual possession of this defendant, upon storage with it, from on or about the 26th

13 day of June, 1923, to the present time; that the same were placed in such storage by the defendant, Hattie Notes, under an agreement providing for compensation to this defendant for the removal of said goods from the Lenox Apartment House to the storage plant of this defendant and for the storage thereof; and that, upon the issuance of the writ of replevin in the aforesaid action at law entitled Hattie Notes vs. Security Storage Company, and numbered 68,005 on the Law Docket of this court, the Marshal replevied said

household goods and effects on or about the 6th day of September, 1923, but continued the storage thereof undisturbed, in actual effect, with this defendant, which said storage, under the execution of said writ of replevin by the Marshal, was continued, after the institution of said action at law entitled Isaac Notes vs. E. C. Snyder, U. S. Marshal for the District of Columbia, et al., Law No. 68.012, by a stipulation entered in said latter cause on the 12th day of September, 1923, by which it was agreed by and between the respective parties to said cause, namely, the plaintiff therein, Isaac Notes, and the defendants therein, E. C. Snyder, U. S. Marshal for the District of Columbia, and Hattie Notes, that said goods and effects should remain in the custody and control of the said E. C. Snyder, U. S. Marshal for the District of Columbia, until such time as the court should adjudicate the title thereto and judgment be entered accordingly. This defendant is further advised that, by the mandate of the Court of Appeals in the aforesaid cause, the judgment of this court in the aforesaid action at Law No. 68.012, in favor of the defendants, the

14 said E. C. Snyder, U. S. Marshal as aforesaid, and Hattie Notes, was affirmed. This defendant further states that said goods and effects still remain in its actual possession, though constructively in the custody of the U. S. Marshal, and that no portion whatever of the charges due this defendant for the hauling of said goods and effects and the storage thereof, as aforesaid, has been paid to it. This defendant is advised, and therefore avers, that, by reason of the foregoing, it has and is entitled to a lien on said goods and effects for the full amount of its charges, and that it should not be asked or required to surrender the same until said charges have been paid to it in full. Subject to its lien aforesaid, and to its right to be paid its reasonable charges aforesaid, this defendant stands ready to abide the decree of this honorable court in the premises.

SECURITY STORAGE COMPANY,
By CHARLES W. PIMPER,
Vice-President.

Attest:

[SEAL.] C. P. RAVENBURG,
Secretary.

PEELLE & OGILBY,
Att'ys for said Defendant.

DISTRICT OF COLUMBIA, ss:

Charles W. Pimper, being first duly sworn, on oath, deposes and says that he has read the foregoing Answer by him subscribed in the name and behalf of Security Storage Company, as defendant as aforesaid, and that he knows the contents thereof; that the matters and things therein stated upon his personal knowledge are
15 true, and those therein stated upon information and belief, he believes to be true.

CHARLES W. PIMPER.

Subscribed and sworn to before me this 21st day of April, 1925.
 [SEAL.] PAUL ALVEY,
Notary Public, D. C.

*Motion for Leave to File Supplemental and Amended Bill of
 Complaint.*

Filed May 1, 1925.

* * * * *

Now comes the plaintiff and asks leave of Court to file a supplemental and amended bill of complaint, the same being attached hereto.

J. B. STEIN &
 CRANDAL MACKEY,
Attorneys for Plaintiff.

Please take notice that the above motion will be called to the attention of the Court on May 8th, 1925, at 10 A. M., or as soon thereafter as counsel may be heard.

J. B. STEIN &
 CRANDAL MACKEY,
Attorneys for Plaintiff.

* * * * *

Supplemental and Amended Bill of Complaint.

With leave first had, Isaac Notes, respectfully shows unto the Court as follows:

That or about the 19th day of March, 1925, he filed his original bill of complaint in this cause against the defendants herein named, in substance claiming some of the household goods, chattels, and personal property in the possession of the defendant, United States Marshal for the District of Columbia, and Security Storage Company, by virtue of certain writ of replevin issued in law cases No. 68,005 and No. 68,012, in the Supreme Court of the District of Columbia, for the reason that some of the goods in question were purchased by the plaintiff herein with money belonging to himself and the defendant, Hattie Notes, his wife; other goods were purchased with his own money and money which he received from his father, while other goods he received from his parents as wedding gifts at the time of his marriage.

The plaintiff is advised, believes, and therefore avers that the herein suit became necessary in order that he may protect his right, title, and interest in and to the aforesaid described household goods, for the reason that such rights are not cognizable in a law case, particularly in the replevin suit sought to be maintained by the plaintiff in law case No. 68,012 as contra-distinguished from relief that may be granted in an Equity Court. And to that end, the plaintiff

herein prayed in his original bill of complaint filed in the above-entitled cause, among other things that a rule issue out of this Court directed to the defendants, Security Storage Company and the United States Marshal, requiring them to show cause why they should not be temporarily restrained and enjoined from delivering to the defendant, Hattie Notes, his wife, the goods, articles, and personal property in question; and that upon final hearing the Court award
17 to the plaintiff, the said goods, chattels, and personal property in question, or so much thereof as in justice and equity he is entitled. Upon consideration of the said original bill, the Court issued its rule directed to the defendants, United States Marshal, and Security Storage Company, requiring them to show cause why they should not be restrained as prayed for in said bill. That Justice Hochling, sitting in Equity Court, after due argument, took under advisement and consideration the question of the allowance or disallowance of the temporary restraining order prayed for in said original bill and said matter is still being considered by the Court.

And the plaintiff further shows by way of supplement that since the Court had under advisement the proposition of the temporary injunction as aforesaid, the defendant, Hattie Notes by her attorney caused an inquisition to be had before Justice Stafford, holding one of the circuit courts, for the purpose of assessing the costs and damages in connection with the affirmance of the judgments in law cases No. 68,005, and No. 68,012. The only question in dispute at the time was the allowance of storage charges as part of the costs in said cause, amounting to \$449.30. The Court, however, allowed the storage charges to be taxed as part of the costs in said law cases, but in doing so it stated it was only performing a formal duty, in that a judgment ordinarily carries costs. But, at the same time the Court advised counsel that by so doing, it did not mean in any way to embarrass or influence the decision that the Equity Court may make
18 in the same matter, but that the plaintiff at any time could institute the necessary proceedings in the above-entitled cause for the purpose of restraining the defendant, Hattie Notes, in the enforcement of the judgments recovered by her in said law cases in so far as they relate to the payment of the storage charges in question. The question of the payment of said storage charges will necessarily be one of the issues to be decided by the Court under the original bill filed herein, which is still pending for decision; and notwithstanding this, the defendant, Hattie Notes, by her attorney, has ordered a writ of execution to issue under said law judgments, and has placed same in the hands of the United States Marshal, one of the defendants herein, for the purpose of enforcing the payment of the said storage charges in question. The plaintiff is further advised, believes, and therefore avers that he has no remedy at law for the purpose of restraining the action of the defendants, Hattie Notes, and the United States Marshal from proceeding under their judgments as aforesaid, until this Court has fully passed on the issue involved in the original bill herein, and is therefore required to go into this Court of Equity in order that it may give full, adequate, and complete relief.

Wherefore, the premises considered, the plaintiff prays

1. That a rule issue out of this Court directed to the defendants, Hattie Notes, and E. C. Snyder, United States Marshal for the District of Columbia, requiring them, and each of them to show cause by a day named, why they shall not be temporarily restrained and enjoined from enforcing the payment of the judgments for costs rendered in the cases of Hattie Notes vs. Security Storage Company, at law No. 68,005, and Isaac Notes vs. Hattie Notes et al.,
19 at law No. 68,012, in so far as said judgments for costs relate to the payment of storage charges on the household goods in question.

2. That the defendant, Hattie Notes, be temporarily restrained and enjoined from obtaining possession of the household goods in question.

3. That the Court upon a final hearing award to the plaintiff the goods, chattels, and personal property in question, or so much thereof as in justice and equity he is entitled.

4. And for such other and further relief as the Court may seem meet and proper.

ISAAC NOTES.

CRANDAL MACKAY &
J. B. STEIN.

DISTRICT OF COLUMBIA, ss:

I do solemnly swear that I have read the annexed petition by me subscribed and I know the contents thereof; that the statement of facts therein made as upon personal knowledge are true, and those made upon information and belief, I believe to be true.

ISAAC NOTES.

Subscribed and sworn to before me this 30th day of April, 1925.

GOLDIE STEIN, [SEAL.]
Notary Public, D. C.

20

Memorandum.

Filed May 9, 1925.

* * * * *

Appropriate order may be prepared by counsel, and submitted upon notice, discharging the rule to show cause heretofore issued against the defendants, E. C. Snyder, U. S. Marshal for the District of Columbia, and the Security Storage Company; and, further, sustaining the motion to dismiss filed on behalf of the defendant, Hattie Notes.

A. A. HOEHLING,
Justice.

May 8, 1925.

Order Dismissing Bill of Complaint, etc.

Filed May 22, 1925.

* * * * *

Upon consideration of the rule issued herein against the defendants, the Security Storage Company and E. C. Snyder, U. S. Marshal for the District of Columbia, and the return thereto, it is by the Court this 22d day of May, A. D. 1925, ordered that said rule be, and the same is hereby discharged, and,

Upon consideration of the motion of the plaintiff for leave to file a supplemental and amended bill of complaint herein, the same is hereby denied, and,

Upon consideration of the motion made by the defendant, Hattie Notes, to dismiss the bill of complaint herein for want of equity, it is this 22d day of May, 1925, ordered, adjudged, and decreed, that said bill of complaint be, and the same is hereby dismissed with costs, and,

21 It further appearing to the Court that storage charges in the sum of \$46.05, have been incurred from March 19, 1925, the time of filing said bill of complaint, until even date herewith, it is further ordered that the plaintiff pay to the Security Storage Company the said sum of \$46.05, in discharge of said storage charges to the date hereof, in addition to the taxable costs in this behalf incurred.

By the Court:

A. A. HOEHLING,
*Justice.**Appeal.*

Filed May 22, 1925.

* * * * *

From the annexed decree, the plaintiff, Isaac Notes, appeals in open Court to the Court of Appeals, and the cost bond is fixed in the sum of \$100.00 and the Supersedeas Bond is fixed in the sum of \$3,000.00.

By the Court:

A. A. HOEHLING,
Justice.

Dated May 22, 1925.

Memorandum.

June 13, 1925.—Undertaking on appeal of plaintiff for \$3,000.00 approved and filed.

22

Assignment of Errors.

Filed July 13, 1925.

* * * * *

The Court erred as follows:

1. In granting the motion of the defendant, Hattie Notes, to dismiss plaintiff's bill of complaint.
2. In holding that the plaintiff, and defendant Hattie Notes, have an estate by the entirety with respect to the goods, chattels and personal property described in the plaintiff's bill of complaint.
3. In holding that the plaintiff is not entitled to the equitable relief prayed for in his bill of complaint.
4. In entering the decree in said cause, discharging rule, in denying the motion of the plaintiff for leave to file a supplemental and amended bill of complaint, and in dismissing the plaintiff's bill.

J. B. STEIN,
Attorney for Plaintiff.

Designation of Record.

Filed July 13, 1925.

* * * * *

In making up the record of the transcript to the Court of Appeals in the above cause, the Clerk will please include the following:

1. Plaintiff's original bill.
2. Rule.
3. Motion of defendant No. 2 to discharge rule and affidavit.
4. Motion of defendant No. 1 to dismiss bill.
- 23 5. Answer of the defendant, Security Storage Company.
6. Motion to file supplemental and amended bill, notice, and bill.
7. Memorandum of opinion of Justice Hoehling.
8. Decree dismissing bill.
9. Order noting appeal.
10. Undertaking on appeal.
11. This designation.

J. B. STEIN,
Attorney for Plaintiff.

24

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA.

District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 23, both inclusive, to be a true and correct transcript of the record,

according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 43807 in Equity, wherein Isaac Notes is Plaintiff and Hattie Notes et al. are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 3rd day of December, 1925.

[Seal Supreme Court of the District of Columbia.]

MORGAN H. BEACH,

Clerk,

By CHAS. B. COFLIN,

Assistant Clerk.

EW.

Endorsed on cover: District of Columbia Supreme Court. No. 4406. Isaac Notes, appellant, vs. Hattie Notes et al. Court of Appeals, District of Columbia. Filed Dec. 19, 1925. Henry W. Hodges, clerk.

COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

IN THE

FEB 27 1926

Court of Appeals of the *Hodges*
District of Columbia CLERK.

OCTOBER TERM 1925

No. 4406

ISAAC NOTES,

Appellant,

VS.

HATTIE NOTES, E. C. SNYDER, U. S. MARSHAL FOR THE
DISTRICT OF COLUMBIA, AND SECURITY STORAGE
COMPANY,

Appellees.

BRIEF OF APPELLANT

CRANDAL MACKEY,

J. B. STEIN,

Attorneys for Appellant.

IN THE
**Court of Appeals of the
District of Columbia**

OCTOBER TERM 1925

No. 4406

ISAAC NOTES,

Appellant,

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HATTIE NOTES, E. C. SNYDER, U. S. MARSHAL FOR THE
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COMPANY,

Appellees.

BRIEF OF APPELLANT

STATEMENT OF CASE

This is an appeal by Isaac Notes, the plaintiff below, from a decree of the Supreme Court of the District of Columbia, sustaining a motion dismissing the plaintiff's bill

and also denying him leave to file a supplemental and amended bill of complaint.

The bill of complaint is as follows :

“The petition of Isaac Notes respectfully shows unto the Court as follows :

1. That he is a citizen of the United States, a resident of the District of Columbia and brings this suit in his own right with respect to the matters and things hereinafter appearing.

2. That the defendant, Hattie Notes, is a citizen of the United States, a resident of the District of Columbia (although now sojourning in the City of Brooklyn, State of New York), and is sued herein as the wife of the plaintiff with respect to the matters and things as will hereafter appear. The defendant, E. C. Snyder, is a citizen of the United States, a resident of the District of Columbia, and is sued herein as the U. S. Marshal for the District of Columbia; and that the defendant, Security Storage Company, is a corporation doing a general storage business in the District of Columbia.

3. The plaintiff and defendant, Hattie Notes, were married the 7th day of December, 1919, and have one child as a result of said marriage. That shortly after this marriage, the plaintiff from time to time purchased certain household goods, effects and furnishings with the *money belonging to himself and his wife*; other articles were purchased with *moneys* which the plaintiff received from *his father*; and other articles of furnishings and effects the *plaintiff received from his parents as* wedding gifts. A list of said household goods, articles, furnishings and effects are hereto annexed, marked Schedule A, and the plaintiff prays that same be read and considered as a part hereof.

4. That the plaintiff and defendant lived together as husband and wife at the Lenox Apartments, in the District of Columbia, until some time in June, 1923, when they decided to place their household goods, effects, and furnishings in storage with the defendant, Security Storage Company, while spending the summer at Atlantic City. That sometime in July, 1923, while the plaintiff and his wife were living together in Atlantic City, certain differences arose between them, and the defendant then and there left and abandoned her husband, taking with her their child; and the defendant has remained away from the plaintiff ever since. This disagreement culminated into a separation suit being filed by the plaintiff in this Honorable Court, to which suit the defendant, Hattie Notes, filed an answer and a cross bill. The Court after due consideration thereof dismissed the plaintiff's petition for separation, as well as the cross bill of the defendant.

5. Your petitioner further represents unto the Court that the defendant, Hattie Notes, shortly after leaving and abandoning the plaintiff, attempted to obtain possession of the household goods, articles, furnishings and effects described in paragraph three of this petition, and did therefore sue out a writ of replevin against the defendant, Security Storage Company. The plaintiff in order to protect his right, title, and interest in and to said articles of household goods, furnishings and effect, instituted a subsequent replevin action naming the U. S. Marshal as one of the defendants in order to prevent the said Marshal from delivering to the defendant, Hattie Notes, the articles in question.

6. Your petitioner is further advised, believes and therefore avers that the Court of Appeals of the District of Columbia in the case of Isaac Notes vs. E. C. Snyder, U. S. Marshal et al., No. 4159, has just decided that because of the admitted joint ownership of the plaintiff, and defendant, Hattie Notes, with respect to the goods and effects in question, the plaintiff could not maintain a replevin action.

7. Your petitioner further represents unto this Court that the goods in question are of the value of at least Five Thousand Dollars (\$5,000), some of which were purchased out of a joint fund of the plaintiff and his wife; other goods were purchased with money which the plaintiff received from his father; and other articles were received by him as wedding presents from his parents. That because of the admitted joint ownership of some of the articles in question, your petitioner is remediless at law; and his only remedy is in a Court of Equity where full, adequate and complete relief can be granted; and that unless immediate relief is granted, the defendant, Hattie Notes, will obtain exclusive possession of the goods in question, and remove them from the District of Columbia, and the right, title and interest of the plaintiff thereto will be lost.

WHEREFORE your petitioner prays:

1. That the process issue out of this Court directed to the defendants and each of them, requiring them to answer the exigencies of this Court.
2. That a rule issue out of this Court directed to the defendant, Security Storage Company, and E. C. Snyder, U. S. Marshal for the D. C., requiring them to show cause by a day named why they should not be temporarily restrained and enjoined from delivering to the defendant, Hattie Notes, the goods, articles and personal property referred to in paragraph 3 of this petition.
3. That the Court upon a final hearing award to the plaintiff the goods, chattels, and personal property in question, or so much thereof as in justice and equity he is entitled.
4. And for such other and further relief as the Court may seem meet and proper."

To the aforesaid bill, the defendant, Hattie Notes, filed the following motion to dismiss said bill:

"Now comes the defendant, Hattie Notes, specially appearing through her attorney for this purpose and no other, and moves the Court to dismiss the bill of complaint herein on the following grounds:

1. That said bill of complaint is without equity in that all of the issues therein presented have been adjudicated between the plaintiff and the defendant, Hattie Notes, in Law No. 68,012, Supreme Court of the District of Columbia, in the case of Isaac Notes vs. Hattie G. Notes, of which cause and the proceedings had thereunder this Court will take judicial notice, all of which said proceedings are referred to and made a part hereof.

2. The bill is without equity for the reason that upon the averments of said bill the plaintiff and this defendant are seized of the property herein as tenants by the entirety."

That pending the hearing on the aforesaid motion to dismiss the bill, the plaintiff asked leave to file the following supplemental and amended bill, to wit:

"With leave first had, Isaac Notes, respectfully shows the Court as follows:

That on about the 19th day of March, 1925, he filed his original bill of complaint in this cause against the defendant herein named, in substance claiming some of the household goods, chattels, and personal property in the possession of the defendant, United States Marshal for the District of Columbia, and Security Storage Company, by virtue of certain writ of replevin issued in law cases No. 68,005 and No. 68,012, in the Supreme Court of the District of Columbia, for

the reason that some of the goods in question were purchased by the plaintiff herein with money belonging to himself and the defendant, Hattie Notes, his wife; other goods were purchased with his own money and money which he received from his father, while other goods he received from his parents as wedding gifts at the time of his marriage.

The plaintiff is advised, believes, and therefore avers that the herein suit became necessary in order that he may protect his right, title, and interest in and to the aforesaid described household goods, for the reason that such rights are not cognizable in a law case, particularly in the replevin suit sought to be maintained by the plaintiff in law case No. 68,012 as contra-distinguished from relief that may be granted in an Equity Court. And to that end, the plaintiff herein prayed in his original bill of complaint filed in the above-entitled cause, among other things that a rule issue out of this Court directed to the defendants, Security Storage Company and the United States Marshal, requiring them to show cause why they should not be temporarily restrained and enjoined from delivering to the defendant, Hattie Notes, his wife, the goods, articles, and personal property in question; and that upon final hearings the Court award to the plaintiff, the said goods, chattels, and personal property in question, or so much thereof as in justice and equity he is entitled. Upon consideration of the said original bill, the Court issued its rule directed to the defendants, United States Marshal, and Security Storage Company, requiring them to show cause why they should not be restrained as prayed for in said bill. That Justice Hoehling, sitting in Equity Court, after due argument, took under advisement and consideration the question of the allowance or disallowance of the temporary restraining order prayed for in said original bill and said matter is still being considered by the Court.

And the plaintiff further shows by way of supplement that since the Court had under advisement the

proposition of the temporary injunction as aforesaid, the defendant, Hattie Notes, by her attorney, caused an inquisition to be had before Justice Stafford, holding one of the circuit courts, for the purpose of assessing the costs and damages in connection with the affirmance of the judgments in law cases No. 68,005, and No. 68,012. The only question in dispute at the time was the allowance of storage charges as part of the costs in said cause amounting to \$449.30. The Court, however, allowed the storage charge to be taxed as part of the costs in said law cases, but in doing so it stated it was only performing a formal duty, in that a judgment ordinarily carries costs. But at the same time the Court advised counsel that by so doing, it did not mean in any way to embarrass or influence the decision that the Equity Court may make in the same matter, but that the plaintiff at any time could institute the necessary proceedings in the above-entitled cause for the purpose of restraining the defendant, Hattie Notes, in the enforcement of the judgments recovered by her in said law cases in so far as they relate to the payment of the storage charges in question. The question of the payment of said storage charges will necessarily be one of the issues to be decided by the Court under the original bill filed herein, which is still pending for decision; and notwithstanding this, the defendant, Hattie Notes, by her attorney, has ordered a writ of execution to issue under said law judgments, and has placed same in the hands of the United States Marshal, one of the defendants herein, for the purpose of enforcing the payment of the said storage charges in question. The plaintiff is further advised, believes, and therefore avers that he has no remedy at law for the purpose of restraining the action of the defendants, Hattie Notes, and the United States Marshal, from proceeding under their judgments as aforesaid, until this Court has fully passed on the issue involved in the original bill herein, and is therefore required to go into this Court of Equity in order that it may give full, adequate, and complete relief.

**WHEREFORE, THE PREMISES CONSIDERED,
THE PLAINTIFF PRAYS:**

1. That a rule issue out of this Court directed to the defendants, Hattie Notes, and E. C. Snyder, United States Marshal for the District of Columbia, requiring them, and each of them to show cause by a day named why they shall not be temporarily restrained and enjoined from enforcing the payment of the judgments for costs rendered in the cases of Hattie Notes. vs. Security Storage Company, at law No. 68,005, and Isaac Notes vs. Hattie Notes et al., at law No. 68,012, insofar as said judgments for costs relate to the payment of storage charges on the household goods in question.

2. That the defendant, Hattie Notes, be temporarily restrained and enjoined from obtaining possession of the household goods in question.

3. That the Court upon a final hearing award to the plaintiff the goods, chattels, and personal property in question, or so much thereof as in justice and equity he is entitled.

4. And for such other and further relief as the Court may seem meet and proper."

ASSIGNMENT OF ERRORS

"The Court erred as follows:

1. In granting the motion of the defendant, Hattie Notes, to dismiss plaintiff's bill of complaint.

2. In holding that the plaintiff, and defendant, Hattie Notes, have an estate by the entirety with respect to the goods, chattels and personal property described in the plaintiff's bill of complaint.

3. In holding that the plaintiff is not entitled to the equitable relief prayed for in his bill of complaint.

4. In entering the decree in said cause, discharging rule, in denying the motion of the plaintiff for leave to file a supplemental and amended bill of complaint, and in dismissing the plaintiff's bill."

The first and second assignment of errors assigned will be discussed together. Prior to the adoption of the Code, as at Common Law, a conveyance to a husband and wife constituted an estate by the entirety in lands. But since the adoption of the Code, an estate by the entirety in lands can only be created by a conveyance to husband and wife as joint tenants. See Section 1031, D. C. Code.

Seitz vs. Seitz, 11 App. D. C. 358.

Settle vs. Settle, Vol. 53, W. L. R., page 774.

The bill distinctly alleges that some of the articles of personal property in question sought to be recovered, were purchased with money belonging to the husband and wife; other articles were purchased by the plaintiff with money he received from his father; and other articles were received by the plaintiff as wedding gifts from his parents. These allegations of ownership in the bill on the part of the plaintiff with respect to the goods in question, for the purpose of the motion to dismiss, must be assumed to be true, for the reason that said motion is the same as a demurrer. See McCormick vs. Hammersley, 1 App. D. C., page 313. There is nothing in the bill from which a legal conclusion can be formed that the articles of personal property therein described are owned or held by the husband or wife as tenants by the entirety. There is no instrument of conveyance

between the parties from which can be construed an estate by the entirety as provided by section 1031 of the Code. To the contrary, the allegation of ownership contained in the bill deny such a conclusion. The interest and extent of ownership of the husband and wife with respect to the articles of personal property in question can only be ascertained by a full and complete hearing of the case on its merits, which right was denied the plaintiff in the Court below.

It is to be observed in passing that the drift of modern policy is unfavorable to extending to personalty this rule of survivorship applicable originally to real estate. *Wait vs. Bovee*, 35 Mich. 425. See also *matter of McKelway*, 221 N. Y. Rep. 15. *Sanford vs. Sanford*, 45 N. Y. 723.

The third and fourth assignment of errors will be discussed together. The Court of Appeals in the case of *Notes vs. Notes*, 53 App. D. C. 233, denied the right of the appellant herein to maintain his replevin action against the appellee, Hattie Notes, with respect to the goods in question for the reason that he did not have the right to the immediate and exclusive possession of the property at the time of the commencement of the action; and further because an action of replevin does not lie for an undivided interest in personal property. But we do not interpret this decision to mean that the husband on that account would be barred from going into a Court of Equity for the purpose of judicially determining the rights of the appellant with respect to some or all of the goods in question. It is a well recognized principle of law that equity is the proper forum in which to enforce contracts between spouses when they cannot sue at law.

Schomaker vs. Schomaker, 247 Pa. 444, was a proceeding in equity by a husband against his wife to compel the latter to permit him to remove certain goods which he claimed as his own from their common domicile, which belonged to the defendant, from which he desired to move to a house of his own, to which his wife had declined an invitation to accompany him. An answer was filed in which the defendant alleged ownership of the property in herself by gifts from the plaintiff; and also cruel treatment and the husband's failure to perform certain agreements with her. After trial upon the original bill the Court found upon sufficient evidence that there was no gift of the property in question to the wife, and entered a decree awarding its possession to the husband. Held that equity had jurisdiction of the case. See also Greenwood vs. Greenwood, 113 Me. 226; McKri vs. McKri, 116 Ark. 68; Lombard vs. Morse, 155 Mass. 136. And see McCormick vs. Hammersley, 1 D. C. App. 313.

The matters contained in the supplemental bill are directly connected with the original bill, and if the original bill is permitted to stand, then the supplemental and amended bill should also be allowed.

We therefore respectfully submit:

That the Court erred in sustaining the motion to dismiss the bill for the reason that the bill discloses no allegation or statement of facts from which a legal conclusion can be drawn that the title of the husband and wife with respect to the goods in question is that of tenancy by the entirety. That the actual title of the parties hereto with respect to the goods in question could only be determined by a trial of the case on its merits.

That the Court erred in holding there was no equity in the plaitniff's bill for the reason that the allegations contained in the bill must be taken as true for the purpose of the motion. That being so, the bill clearly and distinctly asserts ownership by the appellant to part of all of the goods in question valued at Five Thousand Dollars (\$5,000) which were purchased partly with his money and funds received from his father, and other articles he received as wedding gifts from his parents, and in addition half interest in the joint property. These allegations of ownership have not been denied for the purpose of the motion.

Respectfully submitted,

CRANDAL MACKEY,

J. B. STEIN,

Attorncys for Appellant.

